

Notice of Allowability

Application No.

10/656,089

Examiner

Andrae S. Allison

Applicant(s)

PLUMB ET AL.

Art Unit

2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment filed 4/9/2007.
2. ☒ The allowed claim(s) is/are 11-15, 19-22, 33-37, 41-44, 54-57 and 60-61.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material

5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

JOSEPH MANCUSO
SUPERVISORY PATENT EXAMINER

DETAILED ACTION

Allowable Subject Matter

1. The following is an examiner's statement of reasons for allowance: The most pertinent prior art is Weiss (US Patent No.: 6,243,486) and Vaidyanathan (US Patent No.: 5,671,290). Weiss discloses a method for counting colonies of micro-organism in Petri dishes comprising: receiving one or more images of a biological growth medium. Weiss teaches identifying a first number of biological agents and excluding one or more biological agents within a defined distance from an edge of a growth area of the growth medium when the first number is less than a threshold. However, Weiss does not expressly disclose identifying a second number of biological agents. Vaidyanathan discloses a method for separately identifying clumps homogenous objects in a growth medium. Vaidyanathan teaches identifying a first number of biological agents in the biological growth medium and identifying a second number of biological agents in the biological growth medium. However, neither Weiss or Vaidyanathan discloses wherein the first number of biological agents is associated with an interior portion of the biological growth medium and wherein the second number of biological agents associated with a perimeter portion of the biological growth medium. The novelty of the invention is that the colonies in a biological growth medium tends to be located in the perimeter portion of the Petri disk, thus if the first number is larger that the second number an operator is notified so that the Petri disk count may be supervised.

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The examiner finds no reason or motivation to combine the above references in an obvious rejection thus placing the application in condition for allowance.

2. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statements of Reasons for Allowance."

Conclusion

The prior art made part of the record and not relied upon is considered pertinent to applicant's disclosure.

Schalkowsky, Samuel (US Patent No.: 4,637,053) is cited to teach a computer assisted biological assay system.

Perry, Russel C (US Patent No.: 3,811,036) is cited to teach a micro-biological colony counter.

Weiss (US Patent No.: 6,381,353) is cited to teach a system for counting colonies micro-organisms in Petri dishes and other culture media.

Couse et al (US Patent No.: 4,353,988) is cited to teach an improved grid for use in counting the bacterial colonies.

Braier et al (US Patent No.: 5,694,478) is cited to teach a method and apparatus for detecting and identifying microbial colonies.

Gilchrist et al (NPL document titled: "Spiral Plate Method for Bacterial Determination") is cited to teach a method for determining the number of bacteria in a solution.

Inquires

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrae S. Allison whose telephone number is (571) 270-1052. The examiner can normally be reached on Monday-Friday, 8:00 am - 5:00 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Mancuso can be reached on (571) 272-7695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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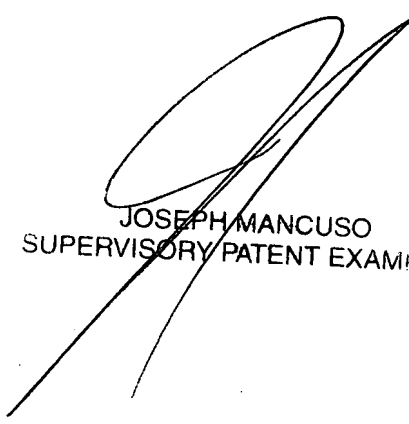
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Andrae Allison

June 7, 2007

A.A.



JOSEPH MANCUSO
SUPERVISORY PATENT EXAMINER